

## Commodity Futures Trading Commission

## § 39.2

*Core Principle 21 of section 5(d) of the Act:*  
FINANCIAL RESOURCES.—

(A) **IN GENERAL.**—The board of trade shall have adequate financial, operational, and managerial resources to discharge each responsibility of the board of trade.

(B) **DETERMINATION OF ADEQUACY.**—The financial resources of the board of trade shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, as calculated on a rolling basis.

(a) *Guidance.* [Reserved.]

(b) *Acceptable Practices.* [Reserved.]

*Core Principle 22 of section 5(d) of the Act:*  
DIVERSITY OF BOARD OF DIRECTORS.—The board of trade, if a publicly traded company, shall endeavor to recruit individuals to serve on the board of directors and the other decision-making bodies (as determined by the Commission) of the board of trade from among, and to have the composition of the bodies reflect, a broad and culturally diverse pool of qualified candidates.

(a) *Guidance.* [Reserved.]

(b) *Acceptable Practices.* [Reserved.]

*Core Principle 23 of section 5(d) of the Act:*  
SECURITIES AND EXCHANGE COMMISSION.—The board of trade shall keep any such records relating to swaps defined in section 1a(47)(A)(v) open to inspection and examination by the Securities and Exchange Commission.

(a) *Guidance.* A designated contract market should have arrangements and resources for collecting and maintaining accurate records pertaining to any swaps agreements defined in section 1a(47)(A)(v) of the Act, and should leave them open to inspection and examination for a period of five years.

(b) *Acceptable Practices.* [Reserved.]

[77 FR 36717, June 19, 2012]

## PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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APPENDIX TO PART 39—FORM DCO DERIVATIVES CLEARING ORGANIZATION APPLICATION FOR REGISTRATIONS

AUTHORITY: 7 U.S.C. 2, and 7a–1 as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

SOURCE: 76 FR 69430, Nov. 8, 2011, unless otherwise noted.

### Subpart A—General Provisions Applicable to Derivatives Clearing Organizations

#### § 39.1 Scope.

The provisions of this subpart A apply to any derivatives clearing organization as defined under section 1a(15) of the Act and § 1.3(d) of this chapter which is registered or deemed to be registered with the Commission as a derivatives clearing organization, is required to register as such with the Commission pursuant to section 5b(a) of the Act, or which voluntarily applies to register as such with the Commission pursuant to section 5b(b) or otherwise.

#### § 39.2 Definitions.

For the purposes of this part,

*Back test* means a test that compares a derivatives clearing organization's initial margin requirements with historical price changes to determine the extent of actual margin coverage.

*Customer* means a person trading in any commodity named in the definition of commodity in section 1a(9) of the Act or in § 1.3 of this chapter, or in any swap as defined in section 1a(47) of

the Act or in § 1.3 of this chapter; *Provided, however*, an owner or holder of a house account as defined in this section shall not be deemed to be a customer within the meaning of section 4d of the Act, the regulations that implement sections 4d and 4f of the Act and § 1.35, and such an owner or holder of such a house account shall otherwise be deemed to be a customer within the meaning of the Act and §§ 1.37 and 1.46 of this chapter and all other sections of these rules, regulations, and orders which do not implement sections 4d and 4f of the Act.

*Customer account or customer origin* means a clearing member account held on behalf of customers, as that term is defined in this section, and which is subject to section 4d(a) or section 4d(f) of the Act.

*House account or house origin* means a clearing member account which is not subject to section 4d(a) or 4d(f) of the Act.

*Key personnel* means derivatives clearing organization personnel who play a significant role in the operations of the derivatives clearing organization, the provision of clearing and settlement services, risk management, or oversight of compliance with the Act and Commission regulations and orders. Key personnel include, but are not limited to, those persons who are or perform the functions of any of the following: chief executive officer; president; chief compliance officer; chief operating officer; chief risk officer; chief financial officer; chief technology officer; and emergency contacts or persons who are responsible for business continuity or disaster recovery planning or program execution.

*Stress test* means a test that compares the impact of potential extreme price moves, changes in option volatility, and/or changes in other inputs that affect the value of a position, to the financial resources of a derivatives clearing organization, clearing member, or large trader, to determine the adequacy of such financial resources.

*Systemically important derivatives clearing organization* means a financial market utility that is a derivatives clearing organization registered under section 5b of the Act, which has been designated by the Financial Stability

Oversight Council to be systemically important and for which the Commission acts as the Supervisory Agency pursuant to section 803(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

### § 39.3 Procedures for registration.

(a) *Application procedures.* (1) An organization desiring to be registered as a derivatives clearing organization shall file electronically an application for registration with the Secretary of the Commission in the format and manner specified by the Commission. The Commission will review the application for registration as a derivatives clearing organization pursuant to the 180-day timeframe and procedures specified in section 6(a) of the Act. The Commission may approve or deny the application or, if deemed appropriate, register the applicant as a derivatives clearing organization subject to conditions.

(2) *Application.* Any person seeking to register as a derivatives clearing organization, any applicant amending its pending application, or any registered derivatives clearing organization seeking to amend its order of registration (applicant), shall submit to the Commission a completed Form DCO, which shall include a cover sheet, all applicable exhibits, and any supplemental materials, including amendments thereto, as provided in the appendix to this part 39 (application). An applicant, when filing a Form DCO for purposes of amending its pending application or requesting an amendment to an existing registration, is only required to submit exhibits and updated information that are relevant to the requested amendment and are necessary to demonstrate compliance with the core principles affected by the requested amendment. The Commission will not commence processing an application unless the applicant has filed the application as required by this section. Failure to file a completed application will preclude the Commission from determining that an application is materially complete, as provided in section 6(a) of the Act. Upon its own initiative, an applicant may file with its completed application additional information that may be necessary or helpful to the Commission in processing the application.